

IN RE: PETITION FOR ZONING VARIANCE
N/S Oberle Avenue, 1700.71' W
of the c/l of Mace Avenue
(300 Oberle Avenue)
15th Election District
5th Councilmanic District

BEFORE THE
DEPUTY ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 89-61-A

George L. Comer, Jr., et ux
Petitioners

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a variance to permit a front yard setback of 24 feet in lieu of the front yard average required of 31 and 1/2 feet to enclose an existing porch, as more particularly described in Petitioners' Exhibit 1.

The Petitioners, by Mrs. Darlene Comer, appeared and testified. There were no Protestants.

Testimony indicated that the subject property, known as 300 Oberle Avenue, is zoned D.R. 5.5 and is currently improved with a one story dwelling with an attached 9' x 7 and 1/2' open porch. Mrs. Comer testified that the house presently contains 3 bedrooms, 1 bathroom, a small kitchen and living room. She indicated that since the kitchen is small and the house has no dining room, additional space is needed for their expanding family to enjoy meals together. Mrs. Comer testified that their children and grandchildren frequently visit them for dinner. Due to the layout of the existing dwelling, Petitioners propose enclosing the open porch, which adjoins the kitchen, and using the additional space in conjunction with the kitchen. The proposed improvements cannot be accomplished without the requested variance. Mrs. Comer introduced as Petitioners' Exhibits 2 and 3 signed affidavits from adjoining neighbors indicating they are not opposed to the granting of the relief requested.

Based upon the testimony and evidence presented at the hearing, all of which was uncontradicted, in the opinion of the Deputy Zoning Commissioner the relief requested sufficiently complies with the requirements of Section 307 of the Baltimore County Zoning Regulations (B.C.Z.R.) and, therefore, should be granted. There is no evidence in the record that the subject variance would adversely affect the health, safety, and/or general welfare of the public. Furthermore, strict compliance with the B.C.Z.R. would result in practical difficulty and/or unreasonable hardship upon the Petitioner.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the requested variance should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 14th day of September, 1988 that the Petition for Zoning Variance to permit a front yard setback of 24 feet in lieu of the front yard average required of 31 and 1/2 feet to enclose an existing porch, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject, however, to the following restriction:

- 1) The Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30-day appellate process from this order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.

ANN M. NASTAROWICZ
Deputy Zoning Commissioner
for Baltimore County

AMN:bjs

-2-

The Avenue Group

442 EASTERN AVENUE • P.O. BOX 7889 • BALTIMORE, MARYLAND 21221 • PHONE (301) 687-7775

August 23, 1988

Zoning Office Room #113
County Office Building
111 West Chesapeake Ave
Towson, Maryland 21204

Dear Ms Clark:

Enclosed as you will find the Purchase order we received from you to run in the issue of August 19, 1988 did not match the ad copy received. I have enclosed a copy of the original purchase order received and a ad copy of what actually appeared in that weeks issue.

If you should have any questions regarding this please do not hesitate to contact me at this office, my number is 687-7775.

Sincerely,
Susan Perry
Classified Manager
The Avenue Newspaper

RECEIVED
AUG 24 1988
ZONING OFFICE

CERTIFICATE OF PUBLICATION

Office of

THE AVENUE NEWS

442 Eastern Blvd.
Baltimore, MD 21221

September 1, 1988

THIS IS TO CERTIFY, that the annexed advertisement of

PETITIONER: George Louis Comer, Jr. et ux, 15th Election District
N/S Oberle Avenue, 1700.71' W of the c/l of Mace Avenue
300 Oberle Avenue (300 Oberle Avenue), Hearing scheduled for
September 13, 1988 at 2:30 p.m. P.O. #02701, Reg. #118833 Case
89-61-A, 73-50 lines@ \$0.55

was inserted in The Avenue News a weekly newspaper

published in Baltimore County, Maryland once a week for 1

successive weeks) before the 31st day of August 1988.

that is to say, the same was inserted in the issues of Sept. 1, 1988

The Avenue Inc.

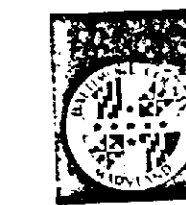
per publisher

By: Susan Perry

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-9333

J. Robert Haines
Zoning Commissioner

September 19, 1988



Dennis F. Rasmussen
County Executive

Mr. & Mrs. George L. Comer, Jr.
300 Oberle Avenue
Baltimore, Maryland 21221

RE: PETITION FOR ZONING VARIANCE
N/S Oberle Avenue, 1700.71' W of the c/l of Mace Avenue
(300 Oberle Avenue)
15th Election District - 5th Councilmanic District
George Louis Comer, Jr., et ux - Petitioners
Case No. 89-61-A

Dear Mr. & Mrs. Comer:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Zoning Variance has been granted in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact Ms. Charlotte Radcliffe at 494-3391.

Very truly yours,

ANN M. NASTAROWICZ
Deputy Zoning Commissioner
for Baltimore County

AMN:bjs

cc: People's Counsel

File

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 15th

Date of Posting 9/1/88

Posted for: Variance

Petitioner: George Louis Comer, Jr., et ux

Location of property: N/S Oberle Ave., 1700.71' W of Mace Ave.

200 Oberle Ave.

Location of Sign: Entry, Double Door, 200 N. E. Corner of property

as shown on plat of R.H. Comer

Remarks: None

Posted by: J. Robert Haines

Date of return: 9/1/88

Number of Signs: 1

"DUPLICATE" CERTIFICATE OF PUBLICATION

TOWSON, MD. August 18, 1988

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., once in each of successive weeks, the first publication appearing on August 18, 1988.

\$35.63

THE JEFFERSONIAN,

S. Zetser-Orlman
Publisher

NOTICE OF HEARING

SALES & LEGAL NOTICES

NOTICE OF HEARING

The Zoning Commission of Baltimore County, by authority of the Board of Commissioners, will hold a public hearing on the proposed petition for zoning variance in Room 108 of the County Office Building, 111 West Chesapeake Avenue, Towson, Maryland, on the following date and time:

Petition for Zoning Variance Case number: 89-61-A N/S Oberle Avenue, 1700.71' W of Mace Avenue (300 Oberle Avenue) 15th Election District 5th Councilmanic District

Petitioner(s): George Louis Comer, Jr., et ux

at 2:30 p.m. Tuesday, Sept. 13, 1988 at 2:30 p.m.

Notice to show a front yard setback of 24 feet in lieu of the front yard average required of 31 and 1/2 feet.

In the event that the Petition is granted, the Petitioner will be required to return, and be responsible for returning, said property to its original condition.

Such request must be in writing and received in the office by the date of the hearing set above or presented at the hearing.

J. ROBERT HAINES
Zoning Commissioner of Baltimore County

8/102 Aug. 18

PETITION FOR ZONING VARIANCE

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 303.1. To allow a front yard setback of 24 ft. in lieu of the front yard average of 31 ft.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (Indicate hardship or practical difficulty)

HARDSHIP - ADDITION TO KITCHEN BY ENCLOSING EXISTING FRONT PORCH. Late family together. Foot would allow room for larger kitchen table.

erised as prescribed by Zoning Regulations.

above Variance advertising, posting, etc., upon filing of this to be bound by the zoning regulations and restrictions of the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Legal Owner(s):

GEORGE L. COMER, JR.

(Type or Print Name)

Darlene R. Comer

(Type or Print Name)

DARLENE R. COMER

(Type or Print Name)

Darlene R. Comer

(Type or Print Name)

300 OBERLE AVE. BALTO. MD. 21221

Address

Phone No. 212-21

City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

George Louis Comer, Jr. and Darlene Rita Comer, his wife

Name

300 Oberle Avenue, Balto., MD 21221 686-7356

Address

Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 23rd day

of June, 1988, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 108, County Office Building in Towson, Baltimore County, on the 13th day of September, 1988, at 2:30 o'clock

P.M.

ESTIMATED LENGTH OF HEARING 1/2 hr.

AVAILABLE FOR HEARING 1/2 hr.

ALL MON. TUES. WED. - NEXT TWO MONTHS

OTHER (over)

EVIDENCED BY: J. Robert Haines

Date 6-8-88

ZONING DESCRIPTION:

Beginning on the north side of Oberle Avenue 50.15 feet wide at the distance of 1700.71 feet west of the center line of Mace Avenue. Being Lot #9, Baltimore County, Plat Book V.P.C. No. 4, folio 190. Being known as 300 Oberle Avenue, in the 15th Election District.

PURCHASE ORDER
BALTIMORE COUNTY, MARYLAND
PURCHASE ORDER NO. 0271
PAGE

ISSUED TO: AVENUE, INC.
FAC. BOX 7665
445 EASTERN BLVD.
LSEEX MC 21221

DATE: 06/04/88

SHIP TO: THE ZONING OFFICE
ROOM 109 COUNTY OFFICE BUILDING
111 W. CHESAPEAKE AVE.
TOWSON, MD 21204

DELIVER ON OR BEFORE: 06/04/88
BUYER: S. FAFNER 454-3047
TERMS: NET
FOR: DESTINATION

ITEM NO.	COMMODITY NUMBER AND DESCRIPTION	QUANTITY	U/M	UNIT PRICE	EXTENDED PRICE
1	5626-65-000-0004 REU# M16653 TO ADVERTISE ZONING HEARINGS		EA		
2	5626-65-000-0054 REU# M16653 41L ADVERTISE PETITION FOR ZONING VARIANCE CASE NUMBER: 89-01-A 15 CHESAPEAKE AVE. 1700.71' W c/l PACE AVENUE 15TH ELECTION DISTRICT - 5TH COUNCILMANIC PETITIONER(S): GEORGE LOUIS COMER, JR., et al HEARING SCHEDULED: TUESDAY, SEPTEMBER 13, 1988 at 2:30 P.M.	1	PA		
3	5655-56-000-0000 REU# M16653 PETER: PLEASE FURNISH ORIGINAL AND ONE COPY OF CERTIFICATION OF PUBLICATION TO AGENCY CLERK, ZONING OFFICE ROOM 113 COUNTY OFFICE BLDG. 111 WEST CHESAPEAKE AVE. TOWSON, MD 21204		EA		

Order subject to cancellation if not delivered within time specified.

YEAR	FUND	AGENCY	PROG.	OBJ.	L.I.E.C.	AMOUNT
89	01	12	02	04	ECCO	00

DO NOT DUPLICATE THIS
CONFIRMING ORDER TO 4

DATE: 06/04/88

THIS ORDER IS SUBJECT TO THE
CONDITIONS AND SPECIAL IN-
STRUCTIONS ON THE REVERSE
SIDE HEREOF INCLUDING HOLD
HARNESS CLAUSE

AUTHORIZED SIGNATURE
Joanne Deitz

CERTIFICATE OF PUBLICATION
Office of
THE AVENUE NEWS

442 Eastern Blvd.
Baltimore, MD 21221

August 18, 1988

THIS IS TO CERTIFY, that the amended advertisement of
PETITIONER: George L. Comer, Jr., et al, in the Matter of
CASE NUMBER: 89-01-A, for a Zoning Variance, was published
in The Avenue News, a weekly newspaper
published in Baltimore County, Maryland once a week for
successive weeks before the 12th day of August, 1988,
that is to say, the same was inserted in the issues of 8/7/88, 8/14/88,
8/21/88, 8/28/88, 9/4/88, 9/11/88, 9/18/88, 9/25/88, 10/2/88, 10/9/88, 10/16/88, 10/23/88, 10/30/88, 11/6/88, 11/13/88, 11/20/88, 11/27/88, 12/4/88, 12/11/88, 12/18/88, 12/25/88, 1/1/89, 1/8/89, 1/15/89, 1/22/89, 1/29/89, 2/5/89, 2/12/89, 2/19/89, 2/26/89, 3/5/89, 3/12/89, 3/19/89, 3/26/89, 4/2/89, 4/9/89, 4/16/89, 4/23/89, 4/30/89, 5/7/89, 5/14/89, 5/21/89, 5/28/89, 6/4/89, 6/11/89, 6/18/89, 6/25/89, 7/2/89, 7/9/89, 7/16/89, 7/23/89, 7/30/89, 8/6/89, 8/13/89, 8/20/89, 8/27/89, 9/3/89, 9/10/89, 9/17/89, 9/24/89, 10/1/89, 10/8/89, 10/15/89, 10/22/89, 10/29/89, 11/5/89, 11/12/89, 11/19/89, 11/26/89, 12/3/89, 12/10/89, 12/17/89, 12/24/89, 1/7/90, 1/14/90, 1/21/90, 1/28/90, 2/4/90, 2/11/90, 2/18/90, 2/25/90, 3/4/90, 3/11/90, 3/18/90, 3/25/90, 4/1/90, 4/8/90, 4/15/90, 4/22/90, 4/29/90, 5/6/90, 5/13/90, 5/20/90, 5/27/90, 6/3/90, 6/10/90, 6/17/90, 6/24/90, 7/1/90, 7/8/90, 7/15/90, 7/22/90, 7/29/90, 8/5/90, 8/12/90, 8/19/90, 8/26/90, 9/2/90, 9/9/90, 9/16/90, 9/23/90, 9/30/90, 10/7/90, 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BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: J. Robert Haines
Zoning Commissioner

FROM: P. David Fields, Director
Office of Planning and Zoning

SUBJECT: Zoning Petitions #89-30-A, 89-59-A, 89-55-A,
89-60-A, 89-61-A, 89-64-A, 89-65-A, 89-83-A
89-66-Spha

Date: July 26, 1988

There are no comprehensive planning factors requiring comment on the subject petitions.

P. David Fields per J. G. Hoswell
P. David Fields, Director
Office of Planning and Zoning

PDF/jat
cc: Shirley Hess, People's Counsel
J. G. Hoswell
Zoning File

RECEIVED
JUL 28 1988
ZONING OFFICE

Baltimore County
Department of Public Works
Bureau of Traffic Engineering
Courts Building, Suite 405
Towson, Maryland 21204
494-3554

July 18, 1988

Mr. J. Robert Haines
Zoning Commissioner
County Office Building
Towson, Maryland 21204

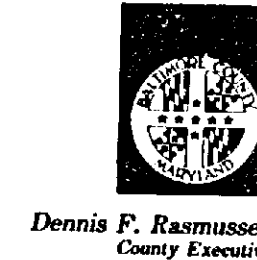
Dear Mr. Haines:

The Bureau of Traffic Engineering has no comments for items number 391, 413, 438, 439, 442, 443, 444, 446, 447, 448, 450, 451, 452, 453, 454, 455, 456, and 457.

Very truly yours,

Stephen E. Weber
Stephen E. Weber, P.E.
Assistant Traffic Engineer

SEW/RF/cps



BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

August 31, 1988

COUNTY OFFICE BLDG.
111 W. Chesapeake Ave.
Towson, Maryland 21204

000

Mr. & Mrs. George L. Comer, Jr.
300 Oberle Avenue
Baltimore, MD 21221

RE: Item No. 442 Case No. 89-61-A
Petitioner: George L. Comer, Jr., et ux
Petition for Zoning Variance

Dear Mr. & Mrs. Comer:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,

James E. Dyer
JAMES E. DYER
Chairman
Zoning Plans Advisory Committee

JED:scj

Enclosures

Baltimore County
Fire Department
Towson, Maryland 21204-2586
494-4500

Paul H. Reincke
Chief

June 21, 1988

J. Robert Haines
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, MD 21204

Re: Property Owner: George Louis Comer, Jr., et ux

Location: N/S Oberle Avenue, 1700.71' W. of c/l Mace Avenue
300 Oberle Avenue

Item No.: 442 Zoning Agenda: Meeting of 6/21/88

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

- () 1. Fire hydrants for the referenced property are required and shall be located at intervals or ___ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.
- () 2. A second means of vehicle access is required for the site.
- () 3. The vehicle dead end condition shown at _____ EXCEEDS the maximum allowed by the Fire Department.
- () 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.
- (x) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code," 1976 edition prior to occupancy.
- () 6. Site plans are approved, as drawn.
- () 7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: *Paul H. Reincke* 6-21-88 Noted and Approved: *John F. O'Neill*
Planning Group Fire Prevention Bureau
Special Inspection Division

/j1



Dennis F. Rasmussen
County Executive

**CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL GENERAL**

DOCKET 77 PAGE 238 CASE NO 90CG638 CATEGORY APPEAL

<p>IN THE MATTER OF THE APPLICATION OF EDWARD K. RUPPERT, ET UX</p> <p>MR. & MRS. WYATT COGER MYRA GERTZ JEANETTE FELDMAN GARY CAPLAN MR. & MRS. MARK WARTOW LESLIE SMITH P. DAVID FIELDS PAT KELLER CYNTHIA L. COMO NAYLOR RUPPERT, JR. PEGGY J. RUPPERT - Protestants/Appellees</p> <p>BALTIMORE COUNTY</p>	<p>ATTORNEYS</p> <p>S. ERIC DINENNA DINENNA, MANN & BRESCHI P.O. BOX 10508 TOWSON, MD (85)-0508 296-6820</p> <p>Myron J. Ashman Ste. 1220 - Court Square Bldg. 200 E. Lexington St., (02) 539-1708</p> <p>Arnold C. Taragin 111 S. Calvert St., Ste. 2700 (02) 385-5330 (PROTESTANTS/APPELLEES)</p> <p>Timothy M. Ketrocco Courthouse, 2nd Fl (4) 887-5657</p>
---	--

9537

COSTS

(1) Feb. 16, 1990 - Appellant's Notice for Appeal from the Decision/Order of the County Board of Appeals of Baltimore County & Petition for Appeal fd.

(2) Feb. 20, 1990 - Certificate of Notice, fd.

(3) Mar 8, 1990 - Appellants' Motion to Stay Order of County Board of Appeals w/ Request for Hearing fd.

(4) Mar 15, 1990 - App of Timothy M. Ketrocco for the Appellee BALTIMORE COUNTY and Same Day Answer to Petition on Appeal fd.

(5) March 19, 1990 - Transcript of Record fd.

(6) March 19, 1990 - Notice of Filing of Record fd.

(7) March 26, 1990 - App. of Myron J. Ashman & Arnold C. Taragin for the Protestants/Appellees MR. & MRS. WYATT COGER, MYRA GERTZ, JEANETTE FELDMAN, GARY CAPLAN, MR. & MRS. MARK WARTOW, LESLIE SMITH, P. DAVID FIELDS, PAT KELLER, CYNTHIA L. COMO, NAYLOR RUPPERT, JR. & PEGGY J. RUPPERT & Same Day Answer fd.

(8) Mar. 27, 1990 Balto. Co.'s Petition for Permanent Injunction and Show Cause Order of Court fd. (WMC) Copy sent for Sheriff's Service

(9) March 29, 1990 - Copy of Transcript from the Board of Appeals fd.

(10) April 3, 1990 - Def't's EDWARD K. RUPPERT AND EVELYN K. RUPPERT Answer to Petition for Permanent Injunction fd.

(11) April 3, 1990 - Def't's EDWARD K. RUPPERT et ux, Petitioners/Appellants, Motion to Strike Baltimore County's Answer to Petition on Appeal fd.

(12) April 5, 1990 - Non Est on Def't. EDWARD AND EVELYN RUPPERT. Moved Sheriff's ret fd.

77 238 90CG638

CASE NO. 90CG638

(13) May 21, 1990 - Petitioner/Appellants' Memorandum, fd.

June 25, 1990. Hon. Dana M. Levitz. Hearing had. Order to be filed.

(14) June 26, 1990 - Motions Ruling - Appellant's Motion to Stay Order of County Board of Appeals (paper #3) is DENIED. Appellant's Motion to Strike Baltimore County's Answer to Petition on Appeal (paper #11) is DENIED. (DML)

Sept. 11, 1990. Hon. William R. Buchanan, Sr. Hearing had. Opinion and Order to be filed.

(15) Oct. 16, 1990 - Opinion & Order of Court that the County Board of Appeals of Baltimore County is AFFIRMED fd. (WRB)

RECEIVED
COUNTY BOARD OF APPEALS
90 OCT 17 AM 8:53

IN THE MATTER OF * IN THE
THE APPLICATION OF * CIRCUIT COURT
EDWARD K. RUPPERT, ET UX *
v. * FOR
BALTIMORE COUNTY, MD. * BALTIMORE COUNTY
* Case No. 90CG638
* * * * *

OPINION

This case is an appeal from a decision of the County Board of Appeals of Baltimore County concerning the Opinion and Order of the Board on January 10, 1990 in which petitioners, Edward K. Ruppert, et ux, petition and amended petition were dismissed at the petitioners' request.

On September 11, 1990, counsel for the parties were heard in open court and after reading the transcripts and legal memoranda and reviewing the conclusion reached by the Board upon the facts in this case, the Court cannot find that the Board was erroneous in the interpretation and finding of fact, and the conclusion from the facts, nor the application of the law to facts, as it had before it evidence legally sufficient to support its decision.

Therefore, the County Board of Appeals of Baltimore County is AFFIRMED.

William R. Buchanan, Sr.
William R. Buchanan, Sr.
Judge
10/12/90

- 3 -

Copies to:
S. Eric DiNenna, Esquire
Myron J. Ashman, Esquire
Arnold C. Taragin, Esquire
Arnold G. Foreman, Esquire

- 4 -

IN THE MATTER OF * IN THE
THE APPLICATION OF * CIRCUIT COURT
EDWARD K. RUPPERT, ET UX. * FOR BALTIMORE COUNTY
* Case No.: 90CG638/77/238
* * * * *

MEMORANDUM

Petitioner/Appellants, Edward K. Ruppert, et ux., by their attorneys S. Eric DiNenna and DiNenna, Mann & Breschi, pursuant to Maryland Rules B-12, file this Memorandum in support of the Petition on Appeal and state as follows:

Background Facts

Petitioner/Appellants requested a Special Hearing to approve the nonconforming use of the subject property for the storage and repair of hauling trucks and equipment. On February 28, 1989, by decision and order, the Zoning Commissioner denied Petitioner's Request for Special Hearing to approve the nonconforming use. The Petitioners filed an Appeal from this decision to the County Board of Appeals of Baltimore County. At the hearing before the Board on January 10, 1989, Petitioners moved to dismiss the Appeal. Under Opinion and Order dated January 17, 1990, the Board affirmed the Zoning Commissioner's Order and further ordered that the trucks and all associated equipment be removed from the site within 45 days from the date of the Board's Order. It is from that decision that this appeal is taken.

Argument

The Board's granting of the dismissal affirmed the Zoning

- 1 -

Commissioner's Order dated February 28, 1989, making the Zoning Commissioner's Order effective law (transcript page 2). The Order required the Commissioner to cease all commercial operations by June 1, 1989. The Board without benefit of a hearing ordered a new compliance date of forty-five (45) days from the date of the Board's Order.

The County Board of Appeals of Baltimore County derives its power from Baltimore County Charter. The charter mandates that all "decisions by the County Board of Appeals shall be made after notice an opportunity for hearing de novo upon the issues of the aforesaid Board." Baltimore County Charter, revised 1968 Article 6, Section 603. The only issue before the Board was the Petitioner's right to the use of his property and the issue of compliance with the Zoning Regulations was not within the Board's jurisdiction. Therefore, the Board's imposition of a new compliance date was not supported by the legally sufficient evidence and the Board was acting outside of its granted authority. Any finding unsupported by any evidence is beyond the power of an administrative body as a denial due process of law. Johnstown Coal and Coke Company v. Dishong, 198 Md. 467, 473 (1951); Heaps v. Cobb, 185 Md. 372, 379 (1950). A reversal of the Board's decision is justified where unsupported by competent material and substantial evidence. Prince George's County v. Meininger, 264 Md. 48 (1972).

The question on judicial review of an administrative decision is whether such action is arbitrary, discriminatory or fairly debatable. Stratakis v. Beauchamp, 268 Md. 643 (1973).

- 2 -

"Only where there is no room for reasonable debate or where the record is void of substantial supporting facts, or the Court is justified in reversing the decision of an administrative body or in declaring its action arbitrary, capricious or illegal."

The hearing before the Board was not the appropriate administrative remedy for addressing the Petitioner's non-compliance with the zoning regulations and therefore the Board's action was arbitrary, capricious and must be reversed.

Points and Authorities

1. Baltimore County Charter, revised 1968 Article 6, Section 603.
2. Johnstown Coal and Coke Company v. Dishong, 198 Md. 467, 473 (1951).
3. Heaps v. Cobb, 185 Md. 372, 379 (1950).
4. Prince George's County v. Meininger, 264 Md. 48 (1972).
5. Stratakis v. Beauchamp, 268 Md. 643 (1973).

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CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 17th day of May, 1990, a copy of the foregoing Memorandum was mailed, postage prepaid to Myron J. Ashman, Esquire, Suite 1220, Court Square Building, 200 E. Lexington Street, Baltimore, Maryland 21202; Arnold C. Taragin, Esquire, Suite 501 Title Building, 110 St. Paul Street,

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Baltimore, Maryland 21202, Co-Counsel for Protestants; and Arnold G. Foreman, Esquire, c/o County Board of Appeals, Room 315, County Office Building, Towson, Maryland 21204.

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